

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
SHANELL JAMES,

Plaintiff,

-against-

UNITED STATES OF AMERICA,

Defendant.  
-----X

JUDGMENT  
09-CV- 0782 (ENV)

A Memorandum and Order of Honorable Eric N. Vitaliano, United States District Judge, having been filed on July 20, 2011, granting defendant's motion to dismiss to the extent that plaintiff's FTCA claims that defendant failed to provide Tolnaftate drops and shower slippers are dismissed for lack of subject matter jurisdiction; ordering that although the Court has subject matter jurisdiction to entertain the FTCA claim for negligent shower maintenance, the claim is dismissed sua sponte for failure to state a claim; dismissing plaintiff's Eighth Amendment claim against the United States sua sponte for failure to state a claim; dismissing the Fourteenth Amendment claim, construed as arising under the Fifth Amendment, sua sponte as frivolous; and dismissing the complaint in its entirety; it is

ORDERED and ADJUDGED that defendant's motion to dismiss is granted to the extent that plaintiff's FTCA claims that defendant failed to provide Tolnaftate drops and shower slippers are dismissed for lack of subject matter jurisdiction; that although the Court has subject matter jurisdiction to entertain the FTCA claim for negligent shower maintenance, the claim is dismissed sua sponte for failure to state a claim; that plaintiff's Eight Amendment claim against the United States is also dismissed sua sponte for failure to state a claim; that the

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Fourteenth Amendment claim, construed as arising under the Fifth Amendment, is dismissed sua sponte as frivolous; and that the complaint is dismissed in its entirety.

Dated: Brooklyn, New York  
July 20, 2011

s/RCH  
ROBERT C. HEINEMANN  
Clerk of Court